

No. 48548-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**DANIEL MILLER,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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By:

  
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## **I. PROCEDURAL HISTORY**

On August 11, 2016, the defendant/appellant committed three counts of Unlawful Possession of a Firearm, Second Degree (UPF2). (Attachment 1, page 1)<sup>1</sup> The defendant was convicted of those crimes on August 26, 2015, under Lewis County Superior Court Cause Number 15-1-00437-21 (Attachment 1, page 1). Sentencing was continued. (RP 2).

On October 4, 2015, while awaiting sentence for the three UPF2's, the defendant committed the crime which is the subject of this appeal, Violation of the Uniform Controlled Substance Act, Possession of a Controlled Substance (VUCSA). (CP 19). He was charged under a different cause number, Lewis County Superior Court Cause Number 15-1-00541-21. (CP 19).

On November 4, 2016, the defendant was first sentenced to the UPF2's (15-1-00437-21) and then entered a change of plea (conviction) and was sentenced for the VUCSA (15-1-00541-21). (RP 6, 7). The Court ran the VUCSA sentence consecutive to that of the UPF's. (RP 12).

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<sup>1</sup> Lewis County Cause Number 15-1-00437-21 is technically not part of his appeal, and therefore Respondent cannot cite to that record. However, the facts contained on the Judgment and Sentence are crucial to the court making the proper decision in this case. So the State has attached to this brief a certified copy of the Judgment and Sentence for 15-1-00437-21. That document will be referred to in this brief as "Attachment 1"

Defendant appealed.

## II. ARGUMENT

### A. THE QUESTION IS NOT WHETHER OR NOT THE TWO CASES CLASSIFY AS OTHER, CURRENT OFFENSES, BUT WHETHER OR NOT THE ORDER OF EVENTS LINE UP WITH RCW 9.94A.589(3), AND THEREBY GIVE THE JUDGE DISCRETION IN SENTENCING THE TWO CASES CONSECUTIVELY.

Appellant is correct that the applicable statute is RCW 9.94A.589. But he should have kept reading past the first paragraph. Paragraph (3) deals with the unique circumstance whereby the other current offense was committed while the defendant was convicted, but not yet sentenced on the other current offense. When this situation occurs, the trial court has discretion to sentence the two offenses consecutively, so long as the court expressly orders it at sentencing.

“Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.” RCW 9.94A.589(3) (emphasis added).

The factual scenario contemplated by this statute matches up perfectly with Mr. Miller’s two cases. He was convicted of the UPF2’s,

but not sentenced. While awaiting sentencing, he committed the VUCSA. He was then sentenced for both cases. The Court, at sentencing, expressly ordered that the two sentences run consecutively.

The reason for this option to run the sentences consecutively under these circumstances is to prevent exactly the result the appellant wants. The VUCSA did not count as another current offense in the offender score of the UPF charges in 15-1-00437-21. (Attachment 1, page 3). Without that extra point, the defendant would have gotten a double benefit in that case: A lower offender score and concurrent sentencing. All that would have happened in 15-1-541-21, is that another point would be added to the offender score. (RP 12). In fact, Judge Hunt actually caught this and expressed his opinion that a concurrent sentencing in this case would be a “manipulation of the system.” (RP 12). He had plenty of justification for running the sentences consecutively.

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### III. CONCLUSION


Mr. Miller's order of events for both of his cases match perfectly with that contemplated by RCW 9.94A.589(3). The sentencing of both cases occurred at the same hearing, and the trial court ordered consecutive sentences. This was also contemplated by RCW 9.94A.589(3). The Appellant did not even address RCW 9.94.589(3) in his opening brief.

The appellate court should therefore affirm the trial court's sentencing.

RESPECTFULLY submitted this 2 day of August, 2016.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

by:

  
J. BRADLEY MEAGHER, WSBA 18685  
Attorney for Plaintiff

# Attachment 1

Felony Judgment and Sentence - Prison

State of Washington vs. Daniel Christopher Miller, Jr.

Lewis County Cause Number 15-1-00437-21



CERTIFIED

Rec'd & Filed  
Lewis County Superior Court

NOV 04 2015

By Kathy A. Brack, Clerk tw  
Deputy  
20

SCANNED

SUPERIOR COURT OF WASHINGTON  
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff,

No. 15-1-00437-21

vs.

FELONY JUDGMENT AND SENTENCE--Prison  
(FJS)

DANIEL CHRISTOPHER MILLER, JR,  
Defendant.

DOB: 05/11/1990

SID: WA24148156

[X] Clerk's Action Required, para 2.1, 4.1, 4.3,  
5.2, 5.3, 5.5 and 5.7

[ ] Defendant Used Motor Vehicle

[ ] Juvenile Decline [ ] Mandatory [ ] Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

☒ guilty plea (date) 08/26/2015 ☐ jury-verdict (date) \_\_\_\_\_ ☐ bench trial (date) \_\_\_\_\_:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
II	Unlawful Possession of a Firearm in the Second Degree	9.41.0402A	FC	8/11/2015
III	Unlawful Possession of a Firearm in the Second Degree	9.41.0402A	FC	8/11/2015
IV	Unlawful Possession of a Firearm in the Second Degree	9.41.0402A	FC	8/11/2015

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

P Packet  
DOC  
Atty  
Acc  
PA

☐ For the crime(s) charged in Count \_\_\_\_\_, **domestic violence** was pled and proved. RCW 10.99.020.

☐ The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.

☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.

☐ Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

☐ In count \_\_\_\_\_ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.\_\_\_\_\_.

☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

☐ Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.

☐ Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.

☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.

☐ In Count \_\_\_\_\_, the defendant had (number of) \_\_\_\_\_ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.

☐ Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.

☐ In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.

☐ Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

☐ In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).

☒ Counts II, III, & IV encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.

☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

<i>Crime</i>	<i>Cause Number</i>	<i>Court (county &amp; state)</i>	<i>DV*Yes</i>
1. None			

\* DV: Domestic Violence was pled and proved.

☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**CRIMINAL HISTORY: (RCW 9.94A.525)**

<i>Crime</i>	<i>Date of Crime</i>	<i>Date Of Sentence</i>	<i>Sentencing Court (County &amp; State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1 VUCSA	12/10/12	01/02/13	Lewis, WA	A	NV	
2 VUCSA	11/19/12	01/02/13	Lewis, WA	A	NV	
3 VUCSA	11/05/12	01/02/13	Lewis, WA	A	NV	
4 Residential Burglary	12/22/10	08/08/11	Lewis, WA	A	NV	
5 VUCSA	06/11/09	09/10/09	Lewis, WA	A	NV	

\* DV: Domestic Violence was pled and proved.

☐ Additional criminal history is attached in Appendix 2.2.

☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

☐ The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

☐ The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
II	5	III	17 – 22 mos	N/A	17 – 22 mos	60 mos
III	5	III	17 – 22 mos	N/A	17 – 22 mos	60 mos
IV	5	III	17 – 22 mos	N/A	17 – 22 mos	60 mos

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are ☐ attached ☐ as follows: \_\_\_\_\_.

**2.4 ☐ Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) \_\_\_\_\_.

☐ above the standard range for Count(s) \_\_\_\_\_.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

☐ within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

**2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_.

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

☐ (Name of agency) \_\_\_\_\_'s costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

**2.6 ☐ Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other: \_\_\_\_\_.

☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

### III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix

3.2 ☒ The court **dismisses** Counts I and V in the charging document.

### IV. Sentence and Order

#### **It is ordered:**

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400 (07/2013))

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LEWIS COUNTY  
PROSECUTING ATTORNEY  
345 W. Main Street, 2<sup>nd</sup> Floor  
Chehalis, WA 98532  
360-740-1240 (Voice) 360-740-1497 (Fax)

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

22 months on Count II 22 months on Count III  
22 months on Count IV

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_.  
☐ The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for ☐ firearm ☐ deadly weapon ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 22

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_.

..... This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): \_\_\_\_\_.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_.

(b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served. Credit for time served is: 3 days.

(c) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_ 18 months for Violent Offenses

Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm

compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol. ☐ have no contact with: \_\_\_\_\_ ☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_. ☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age. .... ☐ part management, and fully comply with all recommended treatment. ☐ comply with the following crime-related prohibitions: \_\_\_\_\_.

☐ Other conditions: \_\_\_\_\_.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment, RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment, RCW 10.99.080
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee \$ 200.00 FRC
		Witness costs \$ _____ WFR
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF
		Jury demand fee \$ _____ JFR
		Extradition costs \$ _____ EXT
		Other \$ _____
PUB	\$ 600.00	Fees for court appointed attorney, RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430
CDF/LDI/FCD	\$ _____	Drug enforcement fund of Lewis County, RCW 9.94A.760
NTF/SAD/SDI	\$ _____	DUI fines, fees and assessments
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency, RCW 43.43.690
	\$ <del>100.00</del>	DNA collection fee, RCW 43.43.7541
FPV	\$ _____	Specialized forest products, RCW 76.48.140
	\$ _____	Other fines or costs for: _____
DEF	\$ _____	Emergency response costs (\$1000 maximum, \$2,500 max. effective Aug. 1, 2012.) RCW 38.52.430 Agency: _____
	\$ _____	Restitution to: _____
RTN/RJN	\$ _____	Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ \_\_\_\_\_ **Total**

RCW 9.94A.760

☒ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor. ☐ is scheduled for \_\_\_\_\_ (date).

☐ The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_. ☐ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

Name of other defendant    Cause Number    (Victim's name)    (Amount-\$)

RJN \_\_\_\_\_

☒ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25.00 per month commencing 60 DAYS FROM TODAY. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

☐ The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

☐ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

☐ The defendant shall not have contact with \_\_\_\_\_ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

☐ The defendant is excluded or prohibited from coming within \_\_\_\_\_ (distance) of: ☐ \_\_\_\_\_ (name of protected person(s))'s ☐ home/ residence ☐ work place ☐ school ☐ (other location(s)) \_\_\_\_\_, or ☐ other location: \_\_\_\_\_.

until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

☐ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Stalking No-Contact Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:** \_\_\_\_\_

**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_.

**4.8 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

## **V. Notices and Signatures**

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

### **5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.



**5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**5.5b** ☐ **Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

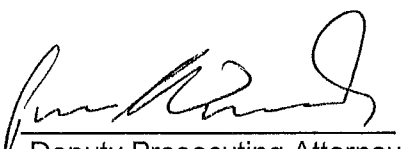
**5.6 Reserved**

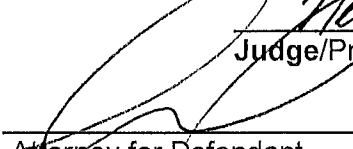
**5.7** ☐ **Department of Licensing Notice:** The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

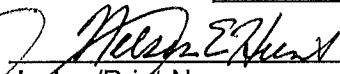
- ☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of \_\_\_\_.
- ☐ No BAC test result.
- ☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- ☐ Drug Related. The defendant was under the influence of or affected by any drug.
- ☐ THC level was \_\_\_\_\_ within two hours after driving.
- ☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.
- Vehicle Info.: ☐ Commercial Veh. ☐ 16 Passenger Veh. ☐ Hazmat Veh.

**5.8 Other:** \_\_\_\_\_

**Done** in Open Court and in the presence of the defendant this date: NOVEMBER 4, 2005.

  
Deputy Prosecuting Attorney  
WSBA No. 33039  
Paul Masiello

  
Attorney for Defendant  
WSBA No. 24637  
Don Blair

  
Judge/Print Name:

  
Daniel Christopher Miller, Jr.

**Nelson E. Hunt**

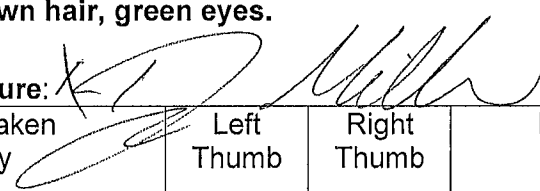
**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: \_\_\_\_\_



VI. Identification of the Defendant				
SID No.: <b>WA24148156</b> (If no SID complete a separate Applicant card (form FD-258) for State Patrol)			Date of Birth: <b>05/11/1990</b>	
FBI No.: <b>725230TC2</b>			Local ID No. _____	
PCN No. _____			Other _____	
Alias name, DOB: _____				
<b>Race:</b>			<b>Ethnicity:</b>	<b>Sex:</b>
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: _____		<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female
<b>Fingerprints:</b> I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document. Clerk of the Court, Deputy Clerk <u>Carla Shannon</u> Dated: <u>11/4/15</u>				
<b>5' 8" 148 pounds, Brown hair, green eyes.</b> <b>The defendant's signature:</b> 				
Left four fingers taken simultaneously		Left Thumb	Right Thumb	Right four fingers taken simultaneously



**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

DANIEL MILLER,

Appellant.

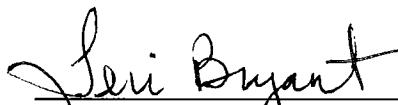
No. 48548-6-II

DECLARATION OF SERVICE

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Ms. Teri Bryant, paralegal for J. Bradley Meagher, Chief Criminal Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On August 3, 2016, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Tanesha La'Trelle Canzater, attorney for appellant, at the following email address: [Canz2@aol.com](mailto:Canz2@aol.com).

DATED this 3<sup>rd</sup> day of August, 2016, at Chehalis, Washington.



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Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office

## LEWIS COUNTY PROSECUTOR

**August 03, 2016 - 1:49 PM**

### Transmittal Letter

Document Uploaded: 3-485486-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 48548-6

**Is this a Personal Restraint Petition?** Yes ☐ No ☒

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

[canz2@aol.com](mailto:canz2@aol.com)